

Report of the Judicial Branch IOLTA Working Group

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The IOLTA Judicial Branch Working Group

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The Majority Report¹

I. Background

A. IOLTA in Maine

In Maine, an IOLTA account is defined as a “pooled trust account earning interest or dividends . . . in which a lawyer holds funds on behalf of client(s), which funds are so small in amount or held for such a short period of time such that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income.” Maine Bar Rule 6(b)(1). As is true in 45 other states, Maine’s IOLTA program is mandatory, meaning all attorneys must participate.²

The Maine Justice Foundation is responsible for distributing IOLTA funds. Me. Bar. Rule 6(e). In recent years, the Maine Justice Foundation has distributed IOLTA funds to six providers, which are commonly referred to as Maine’s “core” non-profit providers of civil legal aid: Cumberland Legal Aid Clinic (“CLAC”), a clinical program at the University of Maine School of Law; Immigrant Legal Advocacy Project (“ILAP”), Maine’s only state-wide immigration legal services organization; Legal Services for the Elderly (“LSE”), a state-wide legal service provider for disadvantaged Mainers over the age of 60; Maine Equal Justice (“MEJ”), a civil legal aid organization focused on systemic advocacy for its low-income clients using an array of tools, including legislative and administrative advocacy and impact litigation; Pine Tree Legal Assistance (“PTLA”), a state-wide civil legal service provider; and the Volunteer Lawyers Project (“VLP”), which provides legal services through attorney volunteers.

¹ Eight of the ten members of the Working Group join in the majority report. Judge Clifford and Attorney Smith do not join in the majority report. Their written comments are appended to this report.

² See Maine Bar Rule 1.15; *see also* ABA, “Status of IOLTA Programs,” Apr. 13, 2017, www.americanbar.org/groups/interest_lawyers_trust_accounts/resources/status_of_iolta_programs/.

Because interest rates have been low over the past decade, IOLTA distributions have been modest. In FY 2018 and FY 2019, \$444,000 and \$600,000 were distributed to these six entities.³

The sole guidance provided by Maine Bar Rule 6 is that IOLTA funds “are intended to provide services that maintain and enhance resources available for access to justice in Maine, including those services that achieve improvements in the administration of justice and provide legal services, education, and assistance to low-income, elderly, or needy clients.” Me. Bar Rule 6(e)(3). At present, IOLTA funds are otherwise unrestricted.

B. The Use of IOLTA Funds for Legislative Lobbying in Maine

Three of the providers who receive IOLTA funds currently engage in some amount of legislative lobbying, in addition to their direct services work: ILAP, MEJ, and LSE.⁴ Together, these three entities received approximately 42.5% of Maine’s IOLTA funds over FYs 2018 and 2019.

The legislative lobbying of these organizations takes different forms. Employees of these organizations have testified before federal and state legislative bodies, both on behalf of clients and at the request of legislators. They have also worked on ballot measures, although, to our knowledge, none has used IOLTA funds for ballot measure lobbying activity.

C. The Formation of the Judicial Branch IOLTA Working Group

On June 27, 2016, the Maine Supreme Judicial Court promulgated a proposed amendment to Rule 6 that would have prohibited IOLTA funds from being spent on, *inter alia*, legislative

³ By contrast, in FY 2007, Maine’s IOLTA revenue exceeded \$1.6 million.

⁴ PTLA is funded by the Legal Services Corporation, and is therefore barred by federal law from doing any legislative lobbying. 42 U.S.C. § 2996e(c).

lobbying and political candidate advocacy.⁵ In addition, the proposed amended Rule 6 limited the use of IOLTA funds for the Maine Justice Foundation’s administrative costs.

Ultimately, after reviewing comments from members of the Maine Bar and other interested parties, the Court issued a final amended Rule 6. The amended Rule 6, promulgated on June 27, 2019, included new reporting and requirements applicable to the Maine Justice Foundation, as well as a ceiling on the percentage of IOLTA funds the Maine Justice Foundation was permitted to use on administrative costs. However, the Court declined—at least at that time—to include any amendments to Rule 6 concerning the use of IOLTA funds by IOLTA beneficiaries.

On July 18, 2019, Chief Justice Leigh Saufley issued a directive forming the Judicial Branch IOLTA Working Group (“the Working Group”). Specifically, the Chief Justice asked this Working Group “to obtain broad-based stakeholder input and analysis of a recent proposal to prohibit the use of court-mandated IOLTA funds for legislative lobbying and political candidate advocacy.”⁶

Thereafter, the Working Group undertook this research and analysis as directed. Members of the Working group met in person monthly from August through October 2019; and

⁵ See “State of Maine Supreme Judicial Court Proposed Amendment to Maine Bar Rules,” available at https://www.courts.maine.gov/rules_adminorders/rules/proposed/2019-05-08_bar/m_bar_r_proposed_amends_2019-05-08.pdf

⁶ The Maine Supreme Judicial Court’s Proposed Amendment to the Maine Bar Rules included additional restrictions on the spending of IOLTA funds “for political or ideological activities,” including, *inter alia*, “supporting or opposing ballot initiatives or referenda” and “voter registration, voter education, voter signature gathering, or get-out-the-vote actions.” However, the Court’s July 18, 2019 directive unequivocally directs this Committee to limit its analysis to a narrower rule precluding “the use of court-mandated IOLTA funds for legislative lobbying and political candidate advocacy.” Likewise, the “Background to IOLTA Rule Amendment” accompanying the June 27, 2016 amendment to Maine Bar Rule 6, explicitly circumscribes the “the scope of consideration for the working group,” “emphasiz[ing] that any potential limitation would apply only to the lobbying generally understood to be legislative and candidate-based lobbying and not to the variety of systemic advocacy that includes litigation or administrative advocacy.”

met by conference telephone in November; and communicated throughout this period and subsequently by email exchange.

II. Political Candidate Advocacy Is Illegal Under Federal Law

The first question with which this Working Group was tasked—whether the Court should prohibit the use of IOLTA funds for political candidate advocacy—is easily resolved. Under federal law, charitable corporations exempt from taxation under 26 U.S.C. § 501(c)(3) cannot “participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” 26 U.S.C. § 501(c)(3); *see also Citizens Union of N.Y. v. AG of N.Y.*, No. 16 cv 9592 (DLC), 2019 U.S. Dist. LEXIS 169438, at *8 (S.D.N.Y. Sep. 30, 2019) (“A 501(c)(3) may not participate in political campaigns.”).

All of the organizations to which the Maine Justice Foundation distributes, and has distributed, IOLTA funds are 501(c)(3) organizations. Accordingly, under federal law, all organizations that receive IOLTA funds are prohibited from taking part in political candidate advocacy.

III. Legislative Lobbying

This Working Group was next asked to examine whether legal service providers should be permitted to use IOLTA funds for legislative lobbying. We have concluded that a prohibition on using IOLTA funds for legislative lobbying would be ill-advised. Below we set forth (A) some of the reasons why we believe it is appropriate to continue to allow IOLTA funds to be used for legislative lobbying, and (B) our responses to some of the common criticisms against the use of IOLTA funds for legislative lobbying.

A. Reasons to Continue Allowing Lobbying to Be Funded with IOLTA Funds

1. Legislative lobbying constitutes legal work

At the outset, it is important to note that, when performed by an attorney, legislative lobbying constitutes the practice of law. Indeed, the Maine Rules of Professional Conduct specifically contemplate—and regulate—the appearance of attorneys before legislative bodies. *See* Me. R. Prof. Conduct 1.0 (M) (defining “tribunal” as including, among other things, “a legislative body”); Me. R. Prof. Conduct 3.9 (“A lawyer representing a client before a legislative body . . . in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions” set forth in the Maine Rules of Professional Conduct); *see also* Me. R. Prof. Conduct 3.9, comment 2 (explaining that “legislatures . . . have a right to expect lawyers to deal with them as they deal with courts”).

Lawyers are required to represent their clients competently and zealously. Where competent and zealous representation requires legislative lobbying, we see no reason to foreclose the use of IOLTA funds for the purpose. Indeed, to the extent that a restriction on the use of IOLTA funds for the provision of certain categories of legal services were to affect the nature and quality of the representation provided by legal service providers, such a restriction would arguably compel legal service providers to violate the spirit, if not the letter, of the Maine Rules of Professional Conduct. *See, e.g.*, Me. R. Prof. Conduct 5.4(c). (“A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.”)

Because legislative lobbying is part of the practice of law, attempts to curtail legislative lobbying by legal aid providers undermine a central mission of legal services: to provide equal access to justice. As Retired Justices Daniel Wathen, Howard Dana, Jr., and Warren Silver noted in their comment regarding the proposed amendments to Rule 6, by limiting the ability of legal service providers to lobby but “leav[ing] those methods available to others, the system [would] tilt[] in the direction of ‘justice for some,’ not all Such a tilt undermines public confidence in the legal system, threatening the integrity of civil society as well as the best interests of those with the least.”⁷

2. Legislative lobbying is consistent with the purpose of IOLTA

The purpose of IOLTA funds is to provide much-needed support to Maine’s legal service providers. Importantly, it has been long understood by the Maine Bar that the provision of legal services is not an end in and of itself. Rather, the provision of legal aid is a critical component of alleviating poverty, an epidemic that is malignant to widespread civil participation in, and belief in, civil society.

For example, in 1990, the 50-member Maine Commission on Legal Needs—chaired by Senator Edmund Muskie⁸—issued a report (“the Muskie Commission Report”) containing “recommendations for action to establish equal access to justice for all Maine citizens.”⁹ Because the Muskie Commission Report is widely considered “the touchstone for all future efforts to

⁷ Comment from Daniel Wathen, Howard H. Dana, Jr., and Warren Silver, submitted May 29, 2019.

⁸ Other prominent members of this commission included,, among others, Governor John R. McKernan, Chief Justice Vincent L. McKusick, Judge Frank M. Coffin, then-attorney Howard H. Dana, Jr.

⁹ Report of the Maine Commission on Legal Needs: An Action Plan for the 1990’s (May 1, 1990) (“The Muskie Commission Report”), at 1.

improve access to justice in Maine,” its framing of the role of legal services is worth considering.¹⁰

By its plain language, that report saw itself not simply as investigating the pathways to expand access to legal services to Maine’s poor, but as “increas[ing] the capacity of the poor under the present system to deal with poverty.” *Id.* at 2. Thus, the Muskie Commission Report rejected the notion that legal service providers should focus solely, or even primarily, on “securing the basic necessities of existence for the poor,” instead emphasizing the importance of **increasing** the “system effort to direct resources to bring about political and economic changes that would address the underlying causes and broad social effects of poverty.”¹¹ Among other things, the Maine Commission recommended increasing the ability of legal service providers to effect “systemic change” through “legislative advocacy.”¹²

3. Legislative lobbying is useful to the Legislature

The “nature of our adversarial system of justice” is “premised on the well-tested principle that truth—as well as fairness—is best discovered by powerful statements on both sides of the question.” *Penson v. Ohio*, 488 U.S. 75, 84 (1988) (internal quotation marks omitted). As in the adjudicative process, advocacy of opposing interest groups plays a critical role in the formation of legislation. Indeed, evidence suggests that lobbyists have increased power in states where the legislators serve part-time, as well as in states with term limits.¹³ Maine has both.

¹⁰ Calien Lewis, “How Volunteers Saved Legal Aid in the 1990s,” *Maine Policy Review* (2002), at 44; *see also* Hon. Kermit V. Lipez, “Reflections of an Access to Justice Chair,” *Maine Lew Review* (2010), at 590 n.13 (noting that “the ‘Muskie Commission Report’ is a critical document in the history of legal services in Maine”).

¹¹ The Muskie Commission Report at 7.

¹² *Id.*

¹³ *See, e.g.*, Gary Moncrief and Joel A. Thompson, “Lobbyists’ views on term limits,” *Spectrum: The Journal of State Government* (Fall 2001) at 14 (describing a survey wherein a “substantial majority of the lobbyists perceive that interest groups gained influence” after term limits were implemented); Steffen W. Schmidt *et al.*, *American Government and Politics Today – Texas Edition, 2011-2012* (2012), at 817

As is underscored by the written comments of several legislators—and as was underscored to us by the legislator-members of our Working Group—legislation is shaped, at least in part, by the advocacy of interested parties.¹⁴ It stands to reason that the legislator will be better equipped to reach the best result when a range of different viewpoints are heard from on a given issue.

4. The scarcity of resources for legal aid

In Maine, as in the rest of the country, there are insufficient funds to ensure representation for indigent persons in all civil cases.¹⁵ That was so even when IOLTA raised substantially more funds than it does now and remains true today.

Groups commissioned to examine the shortage of legal aid providers in Maine have long understood that legislative lobbying plays a critical and cost-effective role in protecting the rights of indigent clients. For example, in 1993, the Commission to Study the Future of Maine’s Courts—chaired by Hon. Harriet P. Henry—issued a report highlighting the “inadequate funding” of legal services in Maine, and underscoring that “[p]ublic advocacy is an important aspect of [indigent] legal services work as it may result in programmatic changes more

(explaining that the time constraints of a part-term legislature tend to make legislators more reliant on lobbyists).

¹⁴ See, e.g., Comment from Representative Andrew M. Gattine, submitted May 29, 2019 (“Just as is true in courts, we find in the State House that skilled delivery of all parties’ positions by trained advocates improves the process. Yet, again just as in the courts, if one side in the conversation is unrepresented or underrepresented, fair consideration of all interests, and a just resolution of competing objectives, may prove elusive.”); Comment from Representative Barbara Cardone, submitted May 28, 2019 (“Just as judges rely on attorneys in the courtroom, legislators rely on lobbying for the clear articulation of legal arguments and an understanding of the policies underlying proposed bills.”).

¹⁵ See, e.g., Justice Action Group, “Justice For All: A Report of the Justice Action Group: Statewide Access to Justice Planning Initiative: Executive Summary” (Oct. 10, 2007), at 3 (noting that “[s]tudies in Maine and nationally consistently show that roughly 75% of the litigants in the civil justice system are not represented by counsel. Virtually all of these individuals are unable to pay for an attorney or to obtain assistance from already overburdened legal aid providers and pro bono attorneys”).

economically than case-by-case litigation.”¹⁶ The American Bar Association has reached a similar conclusion.¹⁷

We continue to believe that, particularly given the chronic dearth of funds for indigent legal services, Maine’s legal service providers should be encouraged to use legislative advocacy as a cost-effective tool to advocate for systemic change for their clients.

5. General operating funds are critical to the health of legal aid providers

Documentation provided to this Working Group by the providers demonstrates that a substantial amount of their funds is restricted. For example, in 2018, only 23% of MEJ’s funds were unrestricted, and only 10.5% of LSE’s funds were unrestricted in 2019. Unlike many other funding sources that legal aid organizations rely on, IOLTA funds are unrestricted. Indeed, a substantial portion of LSE and MEJ’s nonrestricted funds come from IOLTA.¹⁸

General operating funds enable nonprofit organizations like the legal aid providers to sustain their day-to-day operations. These funds also enable nonprofits to build a strong and sustainable infrastructure to provide the programs and services that will have the greatest impact. The legal aid providers have come to rely on IOLTA as relatively unrestricted general operating support to sustain day-to-day operations. Adding restrictions on what IOLTA cannot be used for will add additional administrative and accounting burden.

6. Federal law ensures that lobbying does not become the primary purpose of legal aid providers

¹⁶ The Report of the Commission to Study the Future of Maine’s Courts (Feb. 28, 1993) at 37.

¹⁷ The American Bar Association’s Standards of the Provision of Legal Aid (2006), Standard 3.2, (“Such advocacy can be a more efficient way to address important issues than costly and complicated litigation that challenges or seeks to interpret an adverse statute, appropriation, rule, regulation or policy after it is adopted.”)

¹⁸ According to data provided by the legal service providers, in 2019, LSE had \$206,752 in non-restricted funds, about 38 percent of which (\$78,000) came from IOLTA. In 2018, MEJ had \$273,532 in non-restricted funds, approximately 28 percent of which (\$77,256) came from IOLTA.

All six of the providers receiving Maine IOLTA funding are 501(c)(3) non-profit organizations. Federal law provides a safe harbor for modest levels of lobbying by 501(c)(3) organizations, while strictly limiting the amount of lobbying in which such organizations may engage. Specifically, 501(c)(3) organizations risk losing their tax-exempt status if "a substantial part of the activities of such organization consists . . . attempting, to influence legislation." 26 U.S.C. § 501(h)(1).¹⁹ This provision reflects an attempt of the I.R.S. and Congress to balance the federal government's legitimate interest in preventing tax exempt organizations from focusing primarily on lobbying with the concern that an absolute ban on lobbying by 501(c)(3) organizations would preclude non-profits from being involved in the process of policy-making.²⁰

We believe that the balance struck by federal law for non-profits is suitable for Maine's legal aid providers as well. For the reasons stated above, we believe that, as with other tax-exempt non-profits, there is value in legal aid providers being involved in the process of law making. At the same time, federal law provides an assurance that, while certain IOLTA providers may engage in legislative lobbying, legislative lobbying will not become central to the work of Maine's legal aid providers.

7. Maine's IOLTA rule, as currently written, is not an outlier

Although we do not have access to data on every other state's IOLTA program, we have reason to believe that the vast majority of states do not prohibit the use of IOLTA funds for legislative lobbying. A survey conducted by the Maine Justice Foundation in 2018 received responses from 33 other states. Over 70% of the respondents indicated that their states had "no laws or rules restricting the use of IOLTA dollars at all or other than the fundamental

¹⁹Under the "expenditure test," a 501(c)(3) organization's lobbying ceiling is determined by the organization's exempt purpose expenditures. Organizations that expend less than \$500,000 can spend no more than 20% of their exempt purpose expenditures on lobbying. 26 U.S.C. § 4911(c)(2).

²⁰ Department of the Treasury, *IRMs 7.25: Exempt Organizations Determinations Manual* (2001), at 124

requirement to support legal aid.”²¹ Moreover, of the states that granted funds to legal aid organizations that engage in systemic advocacy, less than 20% of respondents “did not allow IOLTA funds to be used for lobbying.”²²

B. Responses to Arguments for a Ban on Legal Lobbying

Most of the comments submitted to the Maine Supreme Judicial Court opposed the proposed amendments to Rule 6. However, there were a handful of comments supporting the Proposed Amended Rule 6.²³ Other arguments in support of a restriction on legislative lobbying with IOTLA funds were raised during meetings of this Working Group. Many of the concerns raised about the use of IOLTA funds for legislative lobbying were substantive. Below we highlight the central arguments in support of the ban on the use of IOLTA funds for legislative lobbying, as we understand them, and our reasoning as to why we find ultimately find them unconvincing.

1. Allowing IOLTA funds to go to legislative lobbying “is not different than forcing union members to support the political desires of their leaders”

One argument set forth in the comments—and in at least one of the statements in non-concurrence appended to this report—is that the use of IOLTA funds for legislative lobbying constitutes compelled speech. Presumably, this argument stems from the United States Supreme Court’s recent decision in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018). There, the

²¹ Maine Justice Foundation, “An Examination of Maine’s IOLTA Program (Interest on Lawyers Trust Account),” Oct. 2016, at 6.

²² *Id.*

²³ It is worth highlighting the apparent magnitude of the opposition to a curtailment of IOLTA funds within our bar. By our count, the Court received 37 comments regarding the proposed rule, mostly from Maine attorneys, judges, state legislators, and other interested parties. We counted four comments—each submitted by an individual attorney—written in support of the proposed ban on the use of IOLTA funds for legislative lobbying and other types of systemic advocacy. Almost all of the other comments opposed the rule. Several of the comments in opposition to the rule were submitted by multiple Maine attorneys. One comment in opposition was submitted on behalf of 601 individuals, most of whom are Maine attorneys.

Supreme Court reiterated, and expanded, the long-standing principle that the “compelled funding of the speech of other private speakers or groups” runs afoul of the First Amendment. *Knox v. SEIU, Local 1000*, 567 U.S. 298, 309 (2012).

We see two problems with this line of reasoning.

First, by definition, IOLTA funds in Maine has **no** value to individual clients. *See* Maine Bar Rule 6(b)(1) (defining an IOLTA account as a “pooled trust account earning interest or dividends . . . in which a lawyer holds funds on behalf of client(s), **which funds are so small in amount or held for such a short period of time such that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income**”). In the seminal decision on the constitutionality of IOLTA programs, the Supreme Court held that, while “the interest earned in the IOLTA accounts ‘is the “private property” of the owner of the principal,’” *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 235 (2003) (quoting *Phillips v. Washington Legal Found.*, 524 U.S. 156, 172 (1998), clients whose funds were pooled in IOLTA accounts had, by definition, suffered no loss justifying compensation under the takings clause. *Id.* at 240 (“Because that compensation is measured by the owner's pecuniary loss—which is zero whenever the Washington law is obeyed—there has been no violation of the Just Compensation Clause of the Fifth Amendment in this case.”).

Because the funds contributed to IOLTA cannot be traced back to clients, the use of IOLTA funds for legislative lobbying cannot constitute compelled speech.

Second, if the Maine Supreme Judicial Court were to determine that the distribution of IOLTA funds constituted compelled speech, there would be no principled way to distinguish the use of IOLTA funds for legislative lobbying and the use of IOLTA funds for the subsidization of legal services for the poor. To be sure, certain clients whose funds are pooled into IOLTA

accounts would not condone the use of IOLTA funds being used to subsidize legislative lobbying by some or all of the legal service providers to whom IOLTA funds are distributed. It is equally clear, however, that certain clients would not condone the distribution of IOLTA funds to certain legal aid providers altogether, or to the entire project of IOLTA. For example, there are almost certainly landlords whose funds are pooled in IOLTA accounts and who, if asked, would oppose the distribution of funds to legal services providers who defend tenants in eviction cases. Likewise, there are undoubtedly clients who, if asked, would oppose the distribution of IOLTA funds to organizations that provide representation to non-citizens. In other words, to credit the contention that IOLTA funds for legislative lobbying constitute compelled speech would be to discredit the entirety of the IOLTA project.

2. The use of funds for legislative lobbying comes at the expense of direct legal services

One commenter expressed concern about the use of IOLTA funds being diverted “from direct services to indigent clients and, instead, allocat[ing] them to political candidates and lobbyists.” There is no question that there are inadequate funds for indigent civil legal services in Maine. But as is explained above, we believe that this militates against a ban on the use of IOTLA funds for legislative lobbying, not in favor of it.

3. The “politicization” of IOLTA

Supporters of a ban on the use of IOLTA funds for legislative lobbying have contended that the funding of legislative advocacy risks the politicization of the IOLTA program. We would submit, however, that it is impossible to render legal services to low income clients “apolitical,” in the sense used by the proponents of this view: all activity that intersects with government is political, at least in one sense. Within political spheres of power and influence, representation of the interests of low-income populations, who have less power and influence

than other segments of society, is critically important to ensure fairness and access to justice. Far from being impermissibly “political,” promoting access to justice and improving the administration of justice are core principles deeply embedded in our legal system and have long been woven into the fabric of the ethical rules applicable to both judges and lawyers.

While certain clients may be uncomfortable with the notion that their funds are being used in part to fund legislative lobbying on behalf of the poor, as discussed above, this objection to “politicization” could be made with equal force with respect to individual cases brought on behalf of indigent clients. One might imagine that landlords would prefer that IOLTA funds not be used to defend eviction cases; that persons who object to the provision of public benefits would prefer that IOLTA funds not be used for public benefits cases; or that persons who believe that the asylum laws are frequently abused would prefer that ILAP receive no IOLTA funds.²⁴ In other words, to the extent that stakeholders object to the provision of legal services to the poor as “political,” the restriction of funds to individual cases will not solve that problem.²⁵

4. Legal aid providers are veering from their original mission

Finally, another criticism of the current rule is that, by allowing legal aid providers to use IOLTA funds to lobby the legislature, the Court has allowed IOLTA to veer from its intended purpose. As one commentator put it, “[c]learly, such involvement [in legislative lobbying] is very far from the mission intended for the use of IOLTA funds.”

²⁴ As Attorney Smith notes in his Separate Statement of Non-Concurrence, “Immigration policy is truly one of the ‘hot button’ issues of our time.” Smith Non-Concurrence at 6.

²⁵ One “political” example mentioned by proponents of a lobbying restriction has been the support by a legal services provider for the ballot initiative to enact Medicaid expansion. Maine Equal Justice did indeed take a leading role in lobbying for enactment of expansion. However, as noted in Maine Equal Justice’s comment on proposed rule 6, “It is worth noting that MEJ did not utilize IOLTA funds to engage in the effort to expand Medicaid by referendum. Yet it is also worth noting that this was non-partisan, issue-based advocacy that was clearly in the best interests of our clients. There is no reason to exclude this tool for low-income Mainers only, leaving it available only to those who can afford private lawyers.” Comment of Maine Equal Justice, submitted June 6, 2019.

For the reasons set forth above, we respectfully disagree. We believe that, nearly from the inception of IOLTA in Maine, there was a recognition that legislative lobbying was a critical component of one of the central goals of legal aid providers—that is, to “bring about political and economic changes that would address the underlying causes and broad social effects of poverty.”²⁶

IV. Recommendations

For the above stated reasons, we do not believe that significant changes to Maine Bar Rule 6 are warranted. The Supreme Judicial Court could consider making it explicit that the Maine Justice Foundation can provide IOLTA funds only to charitable corporations exempt from taxation under § 501(c)(3). Such a provision will ensure that, in the future, organizations receiving IOLTA funds will be precluded from using funds for political candidate advocacy, and that the amount of lobbying performed by organizations receiving IOLTA funds will remain limited by federal law. At present, all of the legal services providers that receive IOLTA funds are 501(c)(3) organizations. Without a requirement, however, it is possible—at least theoretically—that other types of organizations could receive IOLTA funding in the future.

²⁶ The Muskie Commission Report at 7.